

Nos. PD-1032-20 & PD-1033-20

In the
Court of Criminal Appeals

RECEIVED
COURT OF CRIMINAL APPEALS
6/14/2021
DEANA WILLIAMSON, CLERK

ZENA COLLINS STEPHENS,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition for Review from the First Court of Appeals, Cause No. 01-19-00209-
CR & No. 01-19-00243-CR, Affirming in Part and Reversing in Part, District
Court of Chambers County, 344th Judicial District
Cause No. 18-DCR-0152, Hon. Randy McDonald, Presiding.

**MOTION OF *AMICI CURIAE* REQUESTING PERMISSION TO
PARTICIPATE IN ORAL ARGUMENT**

Amici Curiae are the elected district attorneys—and a county attorney with
related misdemeanor authority—chosen by the voters of their county to enforce the
criminal laws of this State. *Amici* respectfully request permission to participate in
oral argument.

I

Stephens’s petition raises the important issue of whether the Legislature may grant the Attorney General independent criminal prosecutorial authority. *Amici* submit that their participation in oral argument will assist the Court in resolving this issue of first impression. *Amici* respectfully request that their undersigned counsel of record be afforded ten minutes—additional to the twenty minutes allotted to petitioner—to participate in oral argument before this Court on Wednesday, June 16, 2021. *Amici* also move that the Attorney General be allotted an additional ten minutes to balance *Amici*’s time.

II

This case involves novel and complex issues of interpreting our State’s constitution. The framers of the 1876 Constitution fragmented and decentralized prosecutorial authority into the hands of locally elected prosecutors. As some of those officials to whom the constitution grants the authority, *Amici* have a unique perspective of how this principle should be maintained in the State’s criminal jurisprudence.

Granting *Amici*’s independent participation here is in accord with this Court’s practice in previous matters where governmental prosecutorial authorities also requested that this Court clarify their authority and deference as to each other. *See, e.g., Ex parte Medellin*, 223 S.W.3d 315, 324 (Tex. Crim. App. 2006) [Case No. AP-

75,207] (participation of United States as *amicus curiae*); *Saldano v. State*, 70 S.W.3d 873 (Tex. Crim. App. 2002) (participation of Attorney General as *amicus curiae*) [Case No. AP-72,556].

Balancing the Court's operating procedures and fairness to the parties, *Amici* propose ten additional minutes to follow petitioner's argument and precede the Attorney General's argument with no rebuttal. *Amici* propose:

- (1) Stephens and *Amici* receive an aggregated thirty minutes;
- (2) The Attorney General receives thirty minutes;
- (3) Only Stephens's counsel may reserve time for rebuttal;
- (4) *Amici* follow Stephens's principal argument with ten minutes allocated.

Stephens does not oppose this request. The Attorney General takes no position with regard to this motion.

III

For the foregoing reasons, *Amici* respectfully request that the Court permit *Amici's* participation in oral argument along the lines outlined above.

DATED: JUNE 12, 2021

RESPECTFULLY SUBMITTED,

/s/ Justin C. Pfeiffer

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CERTIFICATE OF CONFERENCE

On June 11, 2021, I contacted Chad W. Dunn, counsel for Petitioner Zena Collins Stephens, and Judd E. Stone II, counsel for the Attorney General, regarding the subject of this motion. I first proposed that *Amici* receive ten minutes of oral argument time—additional to the twenty minutes allotted to the parties. The Attorney General opposed additional argument time for *Amici*, but did not oppose *Amici* and Stephens splitting the allocated twenty minutes.

As *Amici*'s merits-stage brief addresses constitutional issues exclusively, a twenty-minute limitation would unfairly prejudice Stephens. *Amici*, therefore, withdrew the initial proposal and proposed that the Attorney General also receive ten additional minutes of arguments such that Stephens and *Amici* split thirty minutes and the Attorney General may consume thirty minutes.

On June 12, 2021, I requested conference on this new proposal. Stephens is unopposed. The Attorney General takes no position with regard to this proposal.

DATED: JUNE 12, 2021

/s/ Justin C. Pfeiffer
JUSTIN C. PFEIFFER

CERTIFICATE OF SERVICE

Pursuant to Texas Rule of Appellate Procedure 9.5(b) (d) & (e), I hereby certify that on June 12, 2021, I electronically filed the foregoing document Clerk of Court, using the efile.TXcourts.gov electronic filing system. In accordance with Rule 9.5(b)(1), I served all counsel by their email address listed below. My email address of justin.pfeiffer@fortbendcountytexas.gov.

DATED: JUNE 12, 2021

/s/ Justin C. Pfeiffer
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